



NEXUS Intertrade (Pty) Ltd

PURCHASING TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES ["THESE CONDITIONS"]

THESE TERMS AND CONDITIONS ARE APPLICABLE TO ORDERS FOR THE SUPPLY OF GOODS AND THE PROVISION OF SERVICES WHERE NO SUPPLY AGREEMENT IS CONTEMPLATED TO BE ENTERED INTO BETWEEN THE PURCHASER AND SUPPLIER OTHER THAN A PO. TERMS AND CONDITIONS WHICH ARE AT VARIANCE OR IN CONFLICT WITH THESE CONDITIONS SHALL NOT APPLY SAVE AND EXCEPT AS SPECIFIED IN THE NEXUS INTERTRADE'S PO. THE SUPPLIER AGREES THAT ANY CHANGES MADE BY IT TO THESE TERMS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO DELETIONS, ADDITIONS AND/OR REWORDING OF CLAUSES, SHALL BE NULL AND VOID AND PRO NON SCRIPTO, AND THAT THE ORIGINAL TERMS SHALL REMAIN IN FORCE, NOTWITHSTANDING SIGNATURE OF THESE TERMS AND CONDITIONS OR ANY POs BY NEXUS INTERTRADE UNLESS EACH SUCH AMENDMENT IS AGREED TO AND IS INITIALLED BY NEXUS INTERTRADE.

Supplier's Full Trading Name _____ (hereinafter referred to as the "SUPPLIER")

Company registration number: _____ **VAT Registration number** _____

1. CONFLICTING CONDITIONS

- 1.1 Where any of THESE CONDITIONS are in conflict with any special terms or conditions incorporated in a PO, the special terms or conditions of the PO shall take precedence. Where any of these CONDITIONS are in conflict with the terms and conditions of any applicable document listed in a PO, THESE CONDITIONS shall take precedence.

2. DEFINITIONS

In THESE CONDITIONS the expressions defined below have the meaning assigned to them, unless contrary to or inconsistent with the context of a PO:

- 2.1 APPROVAL means authorisation in writing by NEXUS INTERTRADE and "approved" has a corresponding meaning.
- 2.2 PO means an official purchase order placed by NEXUS INTERTRADE on the SUPPLIER which is subject to THESE CONDITIONS and incorporates any and all Addenda, Appendices and/or Annexures attached thereto.
- 2.3 BLACK ECONOMIC EMPOWERMENT ("BEE") means broad-based black economic empowerment as contemplated by the Broad-based Black Economic Empowerment Act, 53 of 2003 and any Codes and applicable Charters as issued by the Department of Trade and Industry.
- 2.4 DATE(S) OF COMPLETION means the date(s) stipulated in the PO as being the date(s) by which the SUPPLIER guarantees the GOODS or SERVICES or any particular part thereof (as the case may be) shall be supplied and delivered to the satisfaction of NEXUS INTERTRADE.
- 2.5 DELIVERY means delivery of the GOODS or SERVICES in compliance with the conditions of the PO at the specified point of delivery and within the delivery period, which may be fixed or not fixed.
- 2.6 DELIVERY BASIS determines the SUPPLIER'S obligations and, unless otherwise provided for in the PO, the passing of risk and ownership as set out in THESE CONDITIONS.
- 2.7 DRAWINGS means the drawings referred to in the PO and/or in the specifications, and any modification of such DRAWINGS approved in writing by NEXUS INTERTRADE and such other DRAWINGS as may from time to time be furnished or approved in writing by NEXUS INTERTRADE.
- 2.8 GOODS mean the plant, equipment, supplies, RAW MATERIALS, materials, software, or SERVICES or other items to be supplied by the SUPPLIER in terms of the PO.
- 2.9 PARTIES mean NEXUS INTERTRADE and the SUPPLIER and PARTY shall be a reference to any one of them, as the context requires.
- 2.10 POINT OF DELIVERY means the place stated in the PO at or on which or over or under which the GOODS or SERVICES are to be delivered.
- 2.11 PREMISES means any premises of NEXUS INTERTRADE or any other third party premises within South Africa, as NEXUS INTERTRADE may direct from time to time.
- 2.12 PRICE means the amount in the currency stated in the PO and which may be fixed or not fixed:
- 2.12.1 FIXED PRICE means the PRICE, which cannot be changed and is not subject to adjustment.
- 2.12.2 PRICE NOT FIXED means the PRICE that is subject to adjustment if clearly indicated in the PO.
- 2.13 SAFETY LEGISLATION means the Occupational Health and Safety Act No. 85 of 1993, the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and Regulations and the Mine Health and Safety Act and Regulations Act No. 29 of 1996, whichever is applicable, as amended from time to time.
- 2.14 SERVICES mean any services or work of whatsoever nature rendered by the SUPPLIER to NEXUS INTERTRADE in terms of the PO.
- 2.15 STAFF means any individual, whether employee, agent or sub-contractor, provided by the SUPPLIER to execute the PO.
- 2.16 SUBCONTRACTOR means the PERSON named in the PO for the performance of any part of the PO, or the PERSON to whom any part of the PO has been granted by the SUPPLIER, and includes the successors and assigns of such PERSON.
- 2.17 SUPPLIER means the PARTY with whom a PO has been concluded by NEXUS INTERTRADE, and includes the SUPPLIER'S staff, employees, representatives, and agents, SUBCONTRACTOR'S, successors and permitted assigns.
- #### 3. PRICE BASIS AND ADJUSTMENT OF PRICE
- 3.1 In the absence of agreement to the contrary, the PRICE shall be FIXED and shall fully compensate the SUPPLIER for all obligations, risks and contingencies relating to the execution and completion of the PO and the compliance and guarantees of the GOODS and or SERVICES
- 3.2 NEXUS INTERTRADE shall not be liable for any increase in the PRICE. No payment in addition to the PRICE shall be made, except with the written consent thereto of NEXUS INTERTRADE.

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4. PAYMENT TERMS

Unless otherwise expressly agreed, all payments shall be made **within 30 days from the end of the month** in which the SUPPLIER'S invoice is received, after delivery of the specified GOODS or SERVICES, supported by the relevant documentation and/or payment schedules specified in the PO or as contained elsewhere in THESE CONDITIONS, and after receipt by NEXUS INTERTRADE of the SUPPLIER'S monthly statement.

5. REPORTING AND INSPECTION OF RECORDS

6.1 The SUPPLIER shall, when so requested in writing, submit to NEXUS INTERTRADE written and/or electronic reports, including monthly payment schedules, giving full details of the work carried out in connection with the PO, the total quantities of GOODS delivered, transactional records of the SUPPLIER and any other information as may be reasonably requested. Such reports shall be for such periods and contain such additional information as stipulated by NEXUS INTERTRADE.

6. QUALITY OF GOODS and SERVICES

6.1 The GOODS and SERVICES shall in all respects be in accordance with the samples, patterns, drawings, specifications and other requirements stipulated in the PO, or in accordance with the SOP's stipulated in the PO.

6.2 NEXUS INTERTRADE shall be entitled to:

- 6.2.1 request written confirmation (certificate of compliance) from the SUPPLIER that the GOODS meet the requirements of the PO in every respect;
 - 6.2.2 request an audit to determine the effectiveness of the SUPPLIER'S control of his SUBCONTRACTOR'S activities; and/or
 - 6.2.3 observation and/or audit of the SUPPLIER'S activities (such observation and/or audit shall be extendable to SUBCONTRACTORS where appropriate; and/or
 - 6.2.4 inspection or testing of the GOODS on a continuous or statistical basis;
- provided that reasonable advance notice is given to the SUPPLIER of such audit, observation and/or inspection and that the extent and process of such audit, observation and/or inspection is agreed upon beforehand.

6.3 Where the PO calls for inspection of the GOODS by a PERSON not connected to NEXUS INTERTRADE, and the GOODS are rejected by such inspecting PERSON on reasonable grounds, the SUPPLIER shall bear the actual cost of such inspection. Where NEXUS INTERTRADE is the acceptance authority, NEXUS INTERTRADE reserves the right to recover its actual costs from the SUPPLIER for all subsequent inspections where the GOODS are rejected more than once.

7. GUARANTEE OF GOODS or SERVICES

7.1 In the absence of other arrangements, the SUPPLIER guarantees that the material, implementation workmanship and design of the GOODS or SERVICES shall, for a period of at least 12 months after acceptance thereof by or on behalf of NEXUS INTERTRADE, be free from any material defects if used or applied under normal or specified working conditions or stored under normal or specified storage conditions.

7.2 The guarantee provided for in clause 8.1 shall also apply to repairs or replacements of the GOODS or any parts or components thereof, or to the rectification of defective GOODS. The SUPPLIER shall, unless otherwise agreed in writing by NEXUS INTERTRADE, only use new and unused components or parts when conducting repairs to the GOODS. The guarantee in respect of defective GOODS, components or parts shall be suspended on the date of NEXUS INTERTRADE'S reporting of such defects, and shall recommence on the date of acceptance of such repairs or replacements by or on behalf of NEXUS INTERTRADE, and shall only cover the remaining period of the original guarantee period.

7.3 It is recorded that the true intention of the PARTIES is that NEXUS INTERTRADE shall enjoy trouble-free use of the GOODS for at least the periods stated in clause 8.1. Should any defect occur, NEXUS INTERTRADE shall inform the SUPPLIER thereof, stating the nature of the defect. Should the SUPPLIER fail to remedy the defect within 21 days after having been notified thereof, or fail to come to an agreement with NEXUS INTERTRADE on the matter within the said period, NEXUS INTERTRADE shall, without prejudice to any other rights it may have, be entitled to rectify the defect itself at the SUPPLIER'S expense, or to have the defect rectified by a third party at the SUPPLIER'S expense.

7.4 The SUPPLIER'S obligation under the guarantee shall cover the collection and delivery of the defective GOODS, from and to the POINT OF DELIVERY or PREMISES. Where components or parts are to be replaced, the guarantee shall include the installation thereof.

7.5 In the case where repairs are undertaken on the SUPPLIER'S premises, or at any other premises elected by the SUPPLIER, the SUPPLIER shall, unless otherwise agreed to, be responsible for all costs and the risk connected with the transportation of the defective GOODS to and from such premises.

7.6 Nothing in this clause 8 shall be construed as a limitation of any rights to which NEXUS INTERTRADE may be entitled by virtue of any common law warranty against latent defects or otherwise.

8. ISO AND SANAS COMPLIANCE

8.1 The SUPPLIER warrants that in the DELIVERY of the GOODS, it shall comply in all respects to the standards set by the International Organisation for Standardisation (ISO). In particular, the SUPPLIER warrants it shall comply with the ISO 9000 standards as far as quality management is concerned and with the ISO 14000 standards as far as environmental management is concerned.

8.2 Insofar as the SUPPLIER delivers GOODS obtained from third party manufacturers, the SUPPLIER warrants that it shall obtain such warranties as detailed in clause 9.1 from the applicable manufacturer prior to delivering the GOODS to NEXUS INTERTRADE.

8.3 The SUPPLIER warrants that any weighbridge used shall be properly assized and/or calibrated in accordance with the Trade Metrology Act.

8.4 Weight tolerances or allowances between the weight of bulk cargoes loaded IN (Received) at the warehouse of the SUPPLIER or SERVICE provider and the weight of bulk cargoes loaded OUT (Despatched) shall not exceed a figure of 0.1%.

9. TRANSPORT OF GOODS

9.1 Unless specifically agreed to the contrary, the transporter of GOODS shall be deemed to be the SUPPLIER'S agent or SUBCONTRACTOR. The SUPPLIER and/or his transport agent or SUBCONTRACTOR shall comply with and ensure compliance with all applicable laws and regulations, in particular the Road Transportation Act of 1977, as amended, or any law taking its place or any regulations promulgated in terms thereof.

9.2 Notwithstanding any consigning address stated in the PO or subsequently given to the SUPPLIER, it shall be the responsibility of the SUPPLIER to deliver at his cost, to the POINT OF DELIVERY, all GOODS forming or intended to form part of the PO.

9.3 The SUPPLIER shall hold harmless and indemnify NEXUS INTERTRADE in respect of all claims, demands, proceedings, damages, costs, charges, penalties, fines, confiscation of vehicles, plant and/or articles and any other expenses or costs whatsoever arising out of or in relation to the SUPPLIER'S negligence or failure to comply with all or any of his obligations in terms of this clause 10.

9.4 Weight tolerances or allowances between the weight of bulk cargoes loaded onto the trucks) of the transporter or SERVICE provider and the weight of bulk cargoes delivered to the end Customer shall not exceed a figure of 0.1%.

10. CONSIGNMENT OF GOODS AND DELIVERY PERIODS

10.1 In the absence of an express indication to the contrary, the delivery period(s) or date(s) stated in the PO, service levels agreed or POs placed in terms of such PO, shall be regarded as fixed and shall be binding on the SUPPLIER. Failure by the SUPPLIER to adhere to such delivery date(s) or period(s) shall be considered a material breach, or non-compliance with the conditions of the PO and NEXUS INTERTRADE shall be entitled to exercise its options in terms of clause 16. In the event of cancellation, NEXUS INTERTRADE shall not be liable for any expenditure incurred by the SUPPLIER, except as specifically provided for in the PO. The SUPPLIER shall be liable for all costs, expenses and damages incurred by NEXUS INTERTRADE as a consequence of late delivery, wrong delivery, partial delivery or any other failure to deliver in terms of the PO.

10.2 NEXUS INTERTRADE reserves the right to reject any GOODS not consigned in the name of the SUPPLIER or his stated representative.

10.3 The SUPPLIER or SERVICE PROVIDER acknowledges that time is of the essence of the PO.

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11. PASSING OF OWNERSHIP, RISK AND SAFEGUARDING OF NEXUS INTERTRADE PROPERTY

- 11.1 Ownership shall immediately pass to NEXUS INTERTRADE upon payment by NEXUS INTERTRADE to the SUPPLIER regardless of whether or not the Supplier is in possession of the GOODS or not.
- 11.2 The SUPPLIER may not purchase any material and/or equipment as deliverable GOODS in terms of the PO subject to a condition that ownership of the material and/or the GOODS is reserved by the Suppliers thereof.
- 11.3 Subject to the provisions of clause 12.1 the SUPPLIER indemnifies and holds NEXUS INTERTRADE free and harmless against any act by any third party, which act may have the effect of repossessing and therefore the denying of NEXUS INTERTRADE'S ownership of such purchased GOODS, material and/or equipment by such third party. The conditions in this clause 12.3 shall be incorporated as a condition in all agreements for GOODS, materials and/or equipment from suppliers, and suppliers shall signify to the SUPPLIER their acceptance thereof in advance.
- 11.4 The SUPPLIER shall, until acceptance of DELIVERY by NEXUS INTERTRADE in accordance with THESE CONDITIONS, be solely responsible for any risk, loss of or damage to GOODS, materials and/or equipment and shall indemnify NEXUS INTERTRADE against loss of or damage to any of the aforesaid. The SUPPLIER shall immediately inform NEXUS INTERTRADE in writing of any such loss or damage.
- 11.5 Where the PO is carried out on premises rented by the SUPPLIER, the landlord shall be informed beforehand by the SUPPLIER which of the items on the premises are NEXUS INTERTRADE'S property, and the SUPPLIER shall, at the request of NEXUS INTERTRADE, submit written proof to NEXUS INTERTRADE that such notice has been received by the landlord.

12. TERMINATION OF THE PO AND CANCELLATION OF ORDERS

- 12.1 NEXUS INTERTRADE may, at its entire discretion, at any time terminate the PO, or any part thereof, by written notice to the SUPPLIER, specifying the effective date of such termination.
- 12.2 Upon the date specified in the notice given in terms of clause 13.1 the SUPPLIER shall:
- 12.2.1 cease to manufacture and/or procure the GOODS or deliver the SERVICE as specified in the termination notice save to the extent necessary to protect that part of the PO already completed;
- 12.2.2 terminate all SUBCONTRACTOR arrangements except those to be assigned to NEXUS INTERTRADE pursuant to clause 13.2.5;
- 12.2.3 remove from the PREMISES any equipment, plant and material of the SUPPLIER and repatriate its or its SUBCONTRACTOR'S employees or agents from the PREMISES and generally leave the PREMISES in a safe, clean and tidy state;
- 12.2.4 effect DELIVERY to NEXUS INTERTRADE such part of the GOODS executed by the SUPPLIER up to the date of termination;
- 12.2.5 to the extent possible, assign to NEXUS INTERTRADE all right, title and benefit of the SUPPLIER in the GOODS which, at the date of termination, have not vested in NEXUS INTERTRADE and, if required by NEXUS INTERTRADE, assign to NEXUS INTERTRADE the SUPPLIER'S rights in any agreements with its SUBCONTRACTORS; deliver to NEXUS INTERTRADE all non-proprietary DRAWINGS, specifications and other documents prepared by or on behalf of the SUPPLIER as at the date of termination in connection with the GOODS.
- 12.3 In the event of termination of the PO in terms of this clause 13, NEXUS INTERTRADE shall pay to the SUPPLIER the following amounts:
- 12.3.1 the PRICE properly attributed to that part of the PO executed by the SUPPLIER as at the date of termination, less the aggregate of all previous payments in respect of the PO;
- 12.3.2 the direct expenses incurred by the SUPPLIER in the removal of the SUPPLIER'S equipment and plant from the PREMISES and in the repatriation of the SUPPLIER'S and its SUBCONTRACTOR'S employees and agents;
- 12.3.3 any reasonable amounts to be paid by the SUPPLIER to its SUBCONTRACTORS in connection with the termination of any sub-agreements, including any justifiable and reasonable cancellation charges, provided such cancellation charges were APPROVED by NEXUS INTERTRADE prior to the signing of such sub-agreements;
- 12.3.4 costs reasonably incurred by the SUPPLIER in leaving the PREMISES in a safe, clean and tidy state.
- 12.4 Termination under this clause 13 shall not limit or waive the PARTIES obligations under the PO for that part of the PO completed at the time of termination. For that part of the PO not completed at the time of termination the PARTIES shall waive their respective rights under the PO.
- 12.5 NEXUS INTERTRADE will not be liable for any damages or loss of expected profits on account of termination under this clause 13. NEXUS INTERTRADE'S liability shall be limited to the due payment to the SUPPLIER and the SUPPLIER releases NEXUS INTERTRADE from any further or additional liability actually incurred by the SUPPLIER arising out of termination or cancellation of any orders in terms of this clause 13.

13. PACKAGING, PACKAGING MATERIALS AND CONTAINERS AND PROTECTION

- 13.1 The SUPPLIER shall be responsible for the packaging or protection of GOODS, where applicable, in such manner as to prevent loss or damage in transit and in compliance with the requirements applicable to the mode of transport concerned. The SUPPLIER shall indemnify NEXUS INTERTRADE against any losses, costs and damages caused by, or resulting from, faulty, incorrect or inadequate packaging or protection.
- 13.2 Packaging materials or containers will not be returned to the SUPPLIER except where specifically so provided in the PO. Where provision is made in the PO for the return of the packaging materials or containers, such packaging materials or containers will be returned at the SUPPLIER'S risk and expense.
- 13.3 No allowance shall be made for the mass of bags, containers or packaging materials in determining the mass of the GOODS delivered.

14. BREACH OR NON-COMPLIANCE WITH CONDITIONS OF PO

- 14.1 If:
- 14.1.1 the time has expired within which the PO, or any item thereof should have been completed, or the GOODS or SERVICES should have been delivered;
- 14.1.2 the SUPPLIER refuses or fails to carry out the PO in accordance with the instructions of NEXUS INTERTRADE, or is not making such progress with the PO so as to ensure completion by the DATE OF COMPLETION, or in the event of any other failure or default of the SUPPLIER, NEXUS INTERTRADE may give notice in writing to the SUPPLIER to remedy the failure or default and, should the SUPPLIER fail to comply with the notice within 21 days after the date thereof; or
- 14.1.3 the SUPPLIER goes into provisional or final sequestration/liquidation or is placed under judicial management; or
- 14.1.4 the SUPPLIER goes into voluntary liquidation or, if he is an individual, voluntarily surrenders his estate; or
- 14.1.5 the SUPPLIER is dissolved, in the case of a partnership; or
- 14.1.6 the SUPPLIER makes an offer of compromise or composition to his creditors, or attempts so to do; or
- 14.1.7 the SUPPLIER fails to take any steps to have a judgment set aside within 7 days after such judgment was granted; or
- 14.1.8 the SUPPLIER permits the attachment of any of his assets and fails to uplift such attachment within 14 days after the date of the attachment; or
- 14.1.9 the SUPPLIER, where he is a natural person, no longer qualifies to be a director of a company in terms of the provisions of the Companies Act 1973;

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- 14.1.10 is directly or indirectly, owned and/or controlled by any person, firm or company which is in competition with NEXUS INTERTRADE, or
- 14.1.11 the SUPPLIER commits any breach of the PO,
NEXUS INTERTRADE may, in such event, without prejudice to any of its rights under the PO, allow the SUPPLIER to proceed with the PO in whole or in part, or cancel the PO in whole or in part and or claim damages.
- 14.2 Should NEXUS INTERTRADE direct the SUPPLIER by notice in writing to suspend or discontinue the execution of the PO, in whole or in part, on the day stated in the notice NEXUS INTERTRADE may itself execute or complete the PO, or conclude a PO with any other PERSON or third party for the execution or completion of the PO, or procure other GOODS or SERVICES in substitution for those neglected to be supplied or for those rejected. NEXUS INTERTRADE may recover from the SUPPLIER the cost of such procured GOODS or SERVICES, as well as any other costs and expenses (including the cost of any additional transport at ordinary public rates) which NEXUS INTERTRADE incurred or may incur consequent upon the SUPPLIER'S default.
- 14.3 NEXUS INTERTRADE shall further be entitled to claim such other damages as may have been suffered by NEXUS INTERTRADE as a result of the SUPPLIER'S default.
- 14.4 NEXUS INTERTRADE shall be entitled to withhold payment of any amount due to the SUPPLIER until the SUPPLIER rectifies such default, or causes such default to be rectified.
- 14.5 In the event of the SUPPLIER being unable to execute any part of the PO due to the failure of NEXUS INTERTRADE to carry out its obligations in terms of the PO, the SUPPLIER shall inform NEXUS INTERTRADE, without any limitation, in writing of this situation and shall be entitled to recover all such reasonable costs incurred as a direct result of such failure by NEXUS INTERTRADE, or to renegotiate such price and/or delivery period of the GOODS or SERVICES affected by such failure.
- 15. APPLICABLE LAWS AND INTERPRETATION**
THESE TERMS AND CONDITIONS or any terms or conditions incorporated in the PO shall be subject to and interpreted in accordance with the LAW of the REPUBLIC OF SOUTH AFRICA. The PARTIES agree to the jurisdiction of the High Court of South Africa, Witwatersrand Local Division.
- 16. TIME PERIOD FOR SUBMISSION OF CLAIMS**
All claims by the supplier shall, in the absence of any other arrangements, be submitted in the prescribed manner within 60 days after DELIVERY of the GOODS and/or rendering of the SERVICE. Should the SUPPLIER be unable to comply within the stated period, written notification shall be submitted before expiry of the 60 day period, stating the reasons for the delay and a date when such claims can be expected, which date shall be not later than 60 days from the date of the notice. Should the SUPPLIER fail to submit his claims or to inform NEXUS INTERTRADE of any delay before expiry of the 60 day period, NEXUS INTERTRADE may in its discretion refuse to accept any further claims, in which event the SUPPLIER shall be deemed to have waived any claim still outstanding in terms of the PO or POs placed in terms thereof.
- 17. AMENDMENT OF PO**
- 17.1 The supplier must adhere strictly to the provisions of the PO and shall not deviate from the requirements of the PO in respect of samples, patterns, drawings, specifications, processes or procedures, or from any approved prototype, without the prior approval of NEXUS Intertrade.
- 17.2 No amendment of the PO or of these conditions shall be valid or in force unless such amendment has been reduced to writing and signed by a duly authorized representative of NEXUS Intertrade.
- 17.3 Should the supplier fail to object to the amendment of the PO within 14 days after receipt of such notification by NEXUS Intertrade, the PO shall be deemed to be amended accordingly.
- 18. SUBCONTRACTORS**
- 18.1 The SUPPLIER shall not be permitted to appoint any SUBCONTRACTORS to execute the PO, or any part thereof, without the prior APPROVAL of NEXUS INTERTRADE.
- 18.2 The SUPPLIER shall not be released from his liabilities or obligations under the PO by any arrangement whatsoever with his SUBCONTRACTORS and/or agents in the event of the latter breaching any of the provisions of the PO or of THESE CONDITIONS.
- 19. GENERAL:**
- 19.1 **LIABILITY FOR STAMP DUTY, TAXES, and BANK CHARGES:** All stamp duties, taxes (excluding value-added tax), bank charges, bank interest or other charges of a like nature that may be payable in respect of the PO shall be paid by the SUPPLIER.
- 19.2 **SET OFF:** NEXUS INTERTRADE shall be entitled to set off any amount owing to NEXUS INTERTRADE by the SUPPLIER against any amount owed to the SUPPLIER by NEXUS INTERTRADE. Should the amount which is owed by NEXUS INTERTRADE not have been determined or liquidated, NEXUS INTERTRADE may suspend all further payments to the SUPPLIER and estimate, in good faith, the amount that is owing and set off the estimated amount, subject to adjustment and settlement once the amount has been determined or liquidated by way of arbitration or agreement.
- 19.3 **LANGUAGE** The parties shall use the English language for all communications, documents, proceedings and notices
- 19.4 **SEVERABILITY:** Each provision in THESE CONDITIONS and those of all POs or POs placed in terms thereof is severable from all others, notwithstanding the manner in which they may be linked together or grouped grammatically. If, in terms of any judgment or order, a provision, phrase, sentence or clause is found to be defective or unenforceable for any reason, the remaining provisions, phrases, sentences and clauses shall nevertheless continue to be of full force and effect. In particular, and without limiting the generality of the foregoing, the PARTIES hereto acknowledge their intention to continue to be bound by THESE CONDITIONS and those of POs placed in terms thereof, notwithstanding that any such provision may be found to be unenforceable or void or voidable. In such event the provision concerned shall be severed from the other provisions, each of which shall continue to be of full force.
- 20. INDEMNITY**
The SUPPLIER shall be solely responsible for and indemnify NEXUS INTERTRADE and hold NEXUS INTERTRADE harmless against any losses, expenses, costs, damages, demands or claims arising from or in connection with illness or injury to or the death of any person or employee (including employees of the SUPPLIER, SUBCONTRACTORS or employees, agents and representatives of NEXUS INTERTRADE) and /or damage to property of any or all such persons, suffered or allegedly suffered in connection with or by reason of the execution of the PO, and / or any other reason whatsoever unless such loss, expense, cost, damage, demand or claim was caused by the willful negligence on the part of NEXUS INTERTRADE, its employees, agents or representatives.
- 21. BRIBERY AND PROHIBITION OF EMPLOYMENT**
Should NEXUS INTERTRADE conclude on reasonable grounds that the SUPPLIER has promised, or caused to be promised on his behalf, offered or given a bribe, commission, gift, loan, benefit or other consideration of whatever nature to an official, employee or any other person in the course of obtaining or executing the PO; or the SUPPLIER has acted fraudulently or in bad faith in obtaining or executing any PO with NEXUS INTERTRADE, any publicbody, company, firm or person, or has in the conduct of his business failed to observe statutory requirements, resulting in a criminal conviction, NEXUS INTERTRADE may summarily cancel the PO and shall be entitled to exercise its options in terms of clause 16.
- 22. CONFLICT OF INTEREST**
The SUPPLIER warrants that it shall disclose any and all facts that may be deemed to create a conflict of interest situation (the "conflict of interest"). The conflict of interest may arise in instances where its shareholders, employees, representatives, agents or any people connected in any manner whatsoever with the SUPPLIER are employed by NEXUS INTERTRADE or the spouses or direct family members of any of the people referred to above are employed by NEXUS INTERTRADE. The conflict of interest may be in existence prior to the commencement of the PO, at the time of commencement of the PO, or may arise at any time in the future. This sub-clause survives termination of the PO and continues for a period of two years after.

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23. HEALTH AND SAFETY

- 23.1 The SUPPLIER indemnifies NEXUS INTERTRADE against any loss, damage, legal liability (including claims in terms of the SAFETY LEGISLATION, but not limited thereto), legal costs (including costs on an attorney and client scale) and expenses of whatever nature that NEXUS INTERTRADE may suffer or become liable for
- 23.2 Directly or indirectly, resulting from any negligent or intentional act or omission by the SUPPLIER and/or its SUBCONTRACTOR and/or any of their employees or agents (whether acting within the course and scope of their employment/mandate or otherwise) and the SUPPLIER undertakes to pay to NEXUS INTERTRADE such amount on demand.
- 23.3 A certificate by any director of NEXUS INTERTRADE (whose appointment as such need not be proved) showing the amount due and owing by the SUPPLIER to NEXUS INTERTRADE at any given time, shall be proof of the facts stated therein for the purposes of all legal proceedings including provisional sentence or summary judgment against the SUPPLIER.
- 23.4 For the purposes of the SAFETY LEGISLATION, especially (but not limited to) Section 37(2) of the Occupational Health and Safety Act No. 85 of 1993, it is hereby agreed and the SUPPLIER confirms that:
- 23.4.1 it shall be responsible for the full and proper implementation of and compliance with the provisions of the SAFETY LEGISLATION to the extent that they apply to the DELIVERY of the GOODS or rendering of the SERVICE;
- 23.4.2 it shall be responsible for the welfare, with regard to health and safety, of all its employees, agents and SUBSUPPLIERS in/at all PREMISES, subject to any reasonable directive issued by an authorised representative of NEXUS INTERTRADE;
- 23.4.3 it undertakes to report to the authorised representative of NEXUS INTERTRADE any health and safety hazard which may exist in/at any PREMISES or that may arise during the DELIVERY of the GOODS or rendering of the SERVICE;
- 23.4.4 it shall issue all the necessary and applicable safety and health equipment to all its employees, agents and SUBCONTRACTORS in/at the PREMISES; and
- 23.4.5 it and its employees, agents and SUBCONTRACTORS shall in all circumstances abide by the safety instructions laid down by NEXUS INTERTRADE (inter alia for the prevention and combating of accidents, vandalism, and damage to property, arson, fire damage and similar events).
- 23.5 Notwithstanding the termination of the PO, this clause remains of full force and effect for the purpose of enforcing any rights that a PARTY may have.

24. CODE OF BUSINESS CONDUCT

The NEXUS Intertrade Code of Business Conduct is a set of standards that applies to all employees and officers of NEXUS Intertrade. These standards set out basic rules to guide all employees and officers in carrying out their day-to-day business duties. The same is expected of all of NEXUS Intertrade suppliers. The Supplier warrants that its operations and business strategies are in line with the principles set out in NEXUS Intertrade's Code of Business Conduct, a copy of which is found at www.NEXUS Intertrade.com. The Supplier shall ensure that it has in place policies and procedures ensuring that all of its employees comply and undertake to keep complying, in all respects, with these principles.

25. DATA PROTECTION

- 25.1 In order to supply the Goods and or to render the Services and to comply with the obligations imposed on NEXUS Intertrade in terms of these terms and conditions, NEXUS Intertrade may need to collect, use, store or process Confidential Information and Personal Information of the Supplier. The Supplier hereby authorises such collection, use, storage and processing where the need arises, subject to compliance with the further provisions of this clause.
- 25.2 NEXUS Intertrade shall only collect, use, store or process Personal Information:
- 25.2.1 in compliance with the applicable RSA legislation;
- 25.2.2 as is necessary for the purposes of these terms and conditions; and
- 25.2.3 in accordance with the lawful and reasonable instructions of the Supplier.
- 25.3 NEXUS Intertrade hereby agrees to comply with the security and data protection obligations equivalent to those imposed on it in terms of the applicable data protection RSA legislation, and failing such legislation, it shall take, implement and maintain all such technical and organisational security procedures and measures necessary or appropriate to preserve the security and confidentiality of the Confidential Information or Personal Information in its possession and to protect such Confidential Information or Personal Information against unauthorised or unlawful disclosure, access or processing, accidental loss, destruction or damage.
- 25.4 NEXUS Intertrade may share Confidential or Personal Information with other NEXUS Intertrade affiliates or beneficiaries where necessary in connection with these terms and conditions.

26. FORCE MAJEURE

- 26.1 No PARTY shall be liable to the other for any loss of whatever nature and shall under no circumstances be obliged to compensate the other PARTY for loss of profit or any other damage in respect of the non-performance of any of the provisions of the PO in the event such non-performance is the direct result of, or has been directly caused by force majeure. Force majeure shall mean any event beyond the reasonable control of a PARTY and which could not have been foreseen or prevented by reasonable care and caution on the part of such PARTY. An event of force majeure shall include strikes, accidents to machinery, fire, flood, tempest, war, invasion, act of foreign enemy, civil war, civil commotion assuming the proportions of or amounting to a popular rising, rebellion, revolution, riot (insofar as it is uninsurable), military or usurped power or any act of any person acting on behalf of or in connection with any organisation with activities directed towards the overthrow of the Government de jure or de facto or other similar cause.
- 26.2 A PARTY claiming force majeure shall, within 7 days after becoming aware of such force majeure event, notify the other PARTY in writing thereof, stating the nature, extent and expected duration of such event.
- 26.3 The burden of proof of the existence and extent of the alleged event and the enforceability thereof, shall rest with the PARTY claiming force majeure. The PARTY receiving notice in terms of clause 28.2 shall, within 7 days of receipt thereof, notify the other PARTY of his acceptance or otherwise. In the event of such PARTY notifying the other that the latter's claim of force majeure is not accepted, the provisions of clause 16.1.1 shall prevail.
- 26.4 In the event of such force majeure as notified and accepted in terms of clause 28.4 continuing for a total period of 2 weeks, the PARTY who has received the notice of force majeure shall be entitled to terminate the PO with immediate effect.

27. DISCLOSURE OF CONFIDENTIAL INFORMATION

- 27.1 The PARTIES confirm that, in the course of their negotiations and execution of the PO, it is anticipated that they may disclose or deliver to each other certain proprietary information, which the PARTIES regard as confidential, all for the purpose of enabling each other to perform their obligations in terms of this PO.
- 27.2 Any of the information contained in the PO or THESE CONDITIONS and which is not in public domain, shall be treated as strictly confidential and shall not be disclosed to third parties unless otherwise agreed, save that such information shall be disclosed if required by law or any competent regulatory authority.
- 27.3 Upon termination each party shall return all confidential information in any form to the other party. The provisions of this clause 29 shall remain in effect for a period of five (5) years following the termination of this Agreement unless otherwise agreed in writing by the Parties hereto. The receiving PARTY shall treat the confidential information with the same degree of care to avoid disclosure to any third party as is used with respect to the receiving PARTY'S own information of like importance that is kept confidential.

28. INDULGENCES, WAIVER OF RIGHTS AND RETENTION OF SECURITIES

- 28.1 No latitude, extension of time or any other indulgence which may be given or allowed by either PARTY to the other in respect of any payment or extension of time provided for in THESE CONDITIONS, or the performance of any other obligation shall, under any circumstances, be construed to

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be an implied consent by such PARTY or operate as a waiver or novation of that PARTY'S rights in terms hereof, or prevent such PARTY from imposing, at any time, strict and punctual compliance with each and every provision hereof.

28.2 Payment by NEXUS INTERTRADE shall not incur a liability for NEXUS INTERTRADE to pay for alterations, amendments or additional work not agreed to in writing by NEXUS INTERTRADE, and such payment shall not release the SUPPLIER from his obligations regarding the payment of damages, whether due, ascertained, liquidated or not.

28.3 NEXUS INTERTRADE may retain any part of the securities and retention money held by it in respect of a specific PO for as long as such PO is not completed or executed in accordance with the stipulations, terms and conditions thereof, or for as long as any amount is owing to NEXUS INTERTRADE by the SUPPLIER in respect of the PO.

28.4 The SUPPLIER shall not be entitled to cede or assign any part of the PO to a third party without the prior written consent of NEXUS INTERTRADE.

29 TECHNICAL SUPPORT AND ADVICE RELATING TO THE SUPPLIER'S PRODUCTS

If the SUPPLIER is required to provide support or advice of a technical nature, such as:

29.1 advice on the suitability or performance of the SUPPLIER'S products or materials in any given application; or

29.1.1 advice on the suitability or performance the SUPPLIER'S products in combination with products or materials from another source in any given application; or

29.1.2 advice on the suitability and/or capability of a particular item of plant or equipment to perform a given function in NEXUS INTERTRADE'S business operations, NEXUS INTERTRADE shall be entitled to rely on such advice and, should it subsequently transpire that such advice was not correct, the SUPPLIER shall be liable and NEXUS INTERTRADE shall be entitled to recover such costs it may incur or loss or damage it may suffer from the SUPPLIER.

30 COMMENCEMENT AND TERMINATION OF THE SERVICE

The PO shall commence on the date set out in the PO and shall continue: in the case of a fixed period PO, until expiration of the period specified in the PO; or if no termination date or period is specified in the PO, until terminated by either PARTY on giving the other PARTY written notice of not less than 30 days, or such other period as may be specified in the PO.

31 INTELLECTUAL PROPERTY AND COPYRIGHT

31.1 All inventions, patents, copyright, designs, know-how, trade secrets and any other proprietary rights that may be produced by the SUPPLIER in the performance of the PO at the request of NEXUS INTERTRADE are and will remain the exclusive property of NEXUS INTERTRADE. The SUPPLIER further agrees to render any necessary assistance to NEXUS INTERTRADE in securing and protecting such proprietary rights.

31.2 The SUPPLIER undertakes that, in performing his obligations under THE PO or THESE CONDITIONS he will not infringe upon the proprietary rights of third parties and will immediately alert NEXUS INTERTRADE to the existence of any such infringement.

31.3 All data, specifications and any and all other written information which may be or has been provided to the consultant or which may be produced, or prepared by the SUPPLIER pursuant to the services in terms of this agreement, shall become and/or remain the exclusive property of NEXUS INTERTRADE.

SIGNED ON BEHALF OF THE SUPPLIER _____

NAME OF AUTHORISED SIGNATORY _____

DATE OF SIGNATURE _____

